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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,224	11/04/2003	Dennis P. Robey	1173-001	5282

1009 7590 04/11/2005

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LEXINGTON, KY 40507

EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/701,224

Applicant(s)

ROBEY, DENNIS P.

Examiner

Bryon P. Gehman

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24, 30 and 31 is/are pending in the application.
4a) Of the above claim(s) 25-29 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-24, 30 and 31 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/19/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Applicant's election of Group I in the Paper filed March 7, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 25-29 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 and 18-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 2, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). See also claim 21, line 2.

In claim 1, lines 8 and 9, "the ...guard" is inconsistent with line 6, "at least one guard". See also claim 9, line 1 and claim 10, lines 1, 3, 5 and 6.

In claim 6, line 2, "wheel assembly" lacks antecedent basis as a term or is inconsistent with claim 5.

In claim 18, line 1, "the post" lacks antecedent basis from parent claim 16. In line 2, "the upstanding position" lacks antecedent basis.

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 1, 3, 9-10 and 12 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Logan et al. (2002/0139798). Disclosed is an apparatus comprising a base (12) and upstanding guards (14) associated with the base and capable of movement from a retracted position to an extended upstanding position.

As to claim 3, the base is a generally rectangular frame.

As to claims 9 and 10, each guard is attached to an arm (at 26) of one side of the base, with J-shaped slots or channels to secure the guard to the base and other parts.

As to claim 12, the apparatus is combined with a vehicle.

6. Claims 1, 3 and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Williams (4,991,715). Disclosed is an apparatus (10) comprising a base (12) and an upstanding guard (4, 5) associated with the base, support assemblies (13-

15) and capable of movement from a retracted position to an extended upstanding position.

As to claim 3, the base is a generally rectangular frame.

As to claim 12, the apparatus is combined with a vehicle (a bicycle).

7. Claim 21 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP 5-221483. Disclosed is an apparatus (10) comprising a generally rectangular frame (7), protecting means (2-5) and actuated means (13-15) supporting the frame and facilitating movement of the frame.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 4-6, 13-24 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al. in view of one of JP 5-221483 and Clapp (1,973,372). JP 5-221483 and Clapp each disclose retractable supports (13; 19; respectively) for supporting a base above ground during movement. To modify the apparatus of Logan et al. employing the retractable supports of either one of JP 5-221483 and Clapp would have been obvious in order to render the apparatus more easily moveable yet capable of having the wheels retracted to relatively locate the apparatus in place.

As to claims 4 and 24, JP 5-221483 and Clapp each disclose a plurality of support assemblies.

As to claims 5 and 14, Clapp discloses each support assembly comprising a rotatable wheel secured for pivoting movement.

As to claims 6 and 15, Clapp further discloses a stop (34 and 35).

As to claims 17-20 and 22-23, Logan et al. disclose each guard (14) including an upstanding pivotable post.

As to claims 30 and 31, to retrofit an existing rack employing the teachings of Logan et al. and one of JP 5-221483 and Clapp would fall within the level of ordinary skill in the shipping pallet art.

10. Claims 2, 4-6 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of one of JP 5-221483 and Clapp. To modify the apparatus of Williams employing the retractable supports of either one of JP 5-221483 and Clapp would have been obvious in order to render the apparatus more easily moveable yet capable of having the wheels retracted to relatively locate the apparatus in place.

As to claims 4 and 24, JP 5-221483 and Clapp each disclose a plurality of support assemblies.

As to claims 5 and 14, Clapp discloses each support assembly comprising a rotatable wheel secured for pivoting movement.

As to claims 6 and 15, Clapp further discloses a stop (34 and 35).

11. Claims 7-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 6 above, and further in view of Grigsby et al. (6,585,126). Grigsby et al. disclose two pairs of cross members (110 and 110) defining a space or trough there between (in 112) defining a connector to receive a vehicle wheel or wheels. To modify the prior art further employing the cross member teaching of Grigsby et al. would have been obvious in order to locate the wheels in a fixed location on the apparatus, as suggested by Grigsby et al..

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are shipping containers for vehicles or freight containers in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

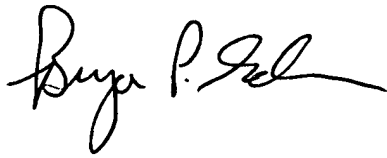
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent than the last name "Gehman".

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG